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**In re amendment of SCR 71.01(2),  
required court reporting,  
and Wis. Stats. § 885.42, videotape procedure**

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**PETITION  
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The Director of State Courts, on the recommendation of the Committee of Chief Judges and District Court Administrators, hereby petitions the court to amend SCR 71.01(2), governing the reporting of court proceedings, and Wis. Stats. s. 885.42, governing videotape procedure. This petition is made pursuant to the court’s rulemaking authority under s. 751.12 and its administrative authority over all courts conferred by Article VII, s. 3 of the Wisconsin Constitution.

This petition is a follow-up to Supreme Court Petition 09-05, also recommended by the chief judges, which sought to clarify when court reporters must transcribe the variety of audio recordings that are played in court – confessions, 911 calls, undercover recordings – following the decision in *State v. Ruiz-Velez*, 2008 WI App. 169. The changes proposed in this second petition are intended to respond to the court’s questions about possible conflicting language found in Wis. Stats. s. 885.42. The chief judges have consulted with the persons who submitted written comments on Petition 09-05 and have incorporated their suggestions in this petition.

The chief judges propose to resolve the issue as follows: videotape depositions will continue to be reported and transcribed by the court reporter unless submitted with a certified transcript, as provided by SCR 71.01(2)(d). Other audio and audiovisual recordings will not be reported and transcribed by the court reporter unless ordered by the court. The court may order a party to submit a transcript, as provided by new language added to SCR 71.01(e) and s. 885.42(2).

The Committee of Chief Judges requests that SCR 71.01(2) be amended to read as follows:

**SCR 71.01 Required court reporting, reporting.**

(2) All proceedings in the circuit court shall be reported, except for the following: ...

(d) If accompanied with a certified transcript, videotape depositions offered as evidence during any hearing or other court proceeding.

(e) Audio and audiovisual recordings of any type, if not submitted under sub. (d), that are played during the proceeding, marked as an exhibit and offered into evidence. If only part of the recording is played in court, the part played shall be precisely identified in the record. The court may direct a party or the court reporter to prepare the transcript of a recording submitted under this subsection.

Comment: Those seeking to admit evidence presented by videotape are advised to consult Wis. Stat. s. 885.42(4).

**885.42 Videotape procedure, when available.**

(1) Depositions. Any deposition may be recorded by audiovisual videotape without a stenographic transcript. Any party to the action may arrange at the party's expense to have a simultaneous stenographic record made. Except as provided by ss. 885.40 to 885.47, ch. 804 governing the practice and procedure in depositions and discovery shall apply.

(2) Other evidence. Such other evidence as is appropriate may be recorded by videotape and be presented at a trial. The court may direct a party or the court reporter to prepare a transcript of an audio or audiovisual recording presented under this subsection in accordance with SCR 71.01(2)(e).

(3) ...

(4) Trial record. At trial, videotape depositions ~~and other testimony presented by videotape~~ shall be reported unless accompanied with a certified transcript submitted in accordance with SCR 71.01(2)(d).

Judicial Council Committee's Note, 1975: Sub. (1). The definition of depositions is meant to include adverse examinations prior to trial.

Sub. (2). This subsection anticipates that certain other evidence, such as the scene of an accident or the lifestyle of an accident victim, may be presented at trial by means of videotape. This provision would also allow the majority of a trial to be conducted by means of videotape.

Sub. (4). This subsection establishes that matters presented by videotape at trial are made a part of the trial record in anticipation of a possible appeal. [Re Order effective Jan. 1, 1976]

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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A. John Voelker  
Director of State Courts